

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

BETH A. BARBOSA,)	
)	
Plaintiff,)	
)	No. 4:09-CV-10
v.)	<i>Mattice / Lee</i>
)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Before the Court is Plaintiff's motion for attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412(d) [Doc. 17]. Defendant has filed a response to Plaintiff's motion stating he has no objection to Plaintiff's motion [Doc. 21]. This matter was referred to the undersigned for a report and recommendation pursuant to 28 U.S.C. §636(b) and Fed. R. Civ. P. 72(b).

In order to recover attorney's fees under the EAJA, four conditions must be met: (1) the plaintiff must be a prevailing party; (2) the application for attorney's fees, including an itemized justification for the amount requested, must be filed within 30 days of the final judgment in the action; (3) no special circumstances warranting denial of fees may exist; and (4) the government's position must be without substantial justification. 28 U.S.C. §2412(d). *See also Damron v. Comm'r of Soc. Sec.*, 104 F.3d 853, 855 (6th Cir. 1997). I **FIND** Plaintiff has met all of the requirements to receive EAJA fees.

First, the Court granted the parties' joint motion for a sentence four remand and Defendant

does not dispute Plaintiff is a prevailing party [Doc. 15, 16]. *See Shalala v. Shafer*, 509 U.S. 292, 302 (1993) (“A sentence-four remand, of course, is a judgment *for* the plaintiff.”). Second, Plaintiff has timely submitted an itemized explanation of the fee request, which the Court finds adequate to support the request [Doc. 18]. Third, Defendant bears the burden of proof to show his position was substantially justified, *Peck v. Comm’r of Soc. Sec.*, 165 F. App’x 443, 446 (6th Cir. 2006), and Defendant has declined to attempt any such showing. Finally, the Court finds no special circumstances warranting denial of fees.

Accordingly, I **RECOMMEND**¹ Plaintiff’s motion for attorney’s fees under the EAJA [Doc. 17] be **GRANTED** and that Plaintiff be awarded attorney’s fees in the amount of \$2,105.30.

s/ Susan K. Lee
SUSAN K. LEE
UNITED STATES MAGISTRATE JUDGE

¹ Any objections to this report and recommendation must be served and filed within ten (10) days after service of a copy of this recommended disposition on the objecting party. Such objections must conform to the requirements of Rule 72(b) of the Federal Rules of Civil Procedure. Failure to file objections within the time specified waives the right to appeal the district court's order. *Thomas v. Arn*, 474 U.S. 140, 149 n.7 (1985). The district court need not provide *de novo* review where objections to this report and recommendation are frivolous, conclusive and general. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986). Only specific objections are reserved for appellate review. *Smith v. Detroit Fed’n of Teachers*, 829 F.2d 1370, 1373 (6th Cir. 1987).